

AMENDED IN SENATE JULY 14, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1369**

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**Introduced by Assembly Member Davis**

February 27, 2009

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An act to amend ~~Sections 1203.017 and 4532~~ *Section 1203.017* of the Penal Code, relating to home detention.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1369, as amended, Davis. Involuntary home detention.

Existing law provides that the county board of supervisors of any county may, upon determination by the correctional administrator that conditions in a jail facility warrant the necessity of releasing sentenced misdemeanor inmates prior to them serving the full amount of a given sentence due to lack of jail space, offer a program under which specified inmates may be required to participate in an involuntary home detention program.

This bill would remove the requirement that the inmates subject to the involuntary home detention program be misdemeanor inmates.

~~Existing law provides specified punishments for the escape or attempted escape from various confinements, including the place of confinement pursuant to a voluntary home detention program.~~

~~This bill would include the escape or attempted escape from the place of confinement pursuant to an involuntary home detention program among the escapes or attempted escapes subject to these provisions. By changing the definition and scope of an existing crime, this bill would impose a state-mandated local program.~~

~~Existing law provides that except in unusual cases where the interests of justice would best be served if a person is granted probation, probation shall not be granted to any person who is convicted of a felony offense in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility.~~

~~This bill would include persons participating in a voluntary or involuntary home detention program among those subject to this provision.~~

~~Existing law provides that the willful failure of a prisoner, including a prisoner participating in a voluntary home detention program, whether convicted of a felony or a misdemeanor, to return to his or her place of confinement no later than the expiration of the period that he or she was authorized to be away from that place of confinement, is an escape from that place of confinement.~~

~~This bill would include prisoners participating in an involuntary home detention program among those prisoners subject to this provision.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes-no.  
State-mandated local program: yes-no.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1203.017 of the Penal Code is amended  
2     to read:  
3     1203.017. (a) Notwithstanding any other provision of law,  
4     upon determination by the correctional administrator that  
5     conditions in a jail facility warrant the necessity of releasing  
6     sentenced inmates prior to them serving the full amount of a given  
7     sentence due to lack of jail space, the board of supervisors of any  
8     county may authorize the correctional administrator to offer a  
9     program under which inmates committed to a county jail or other  
10    county correctional facility or granted probation, or inmates  
11    participating in a work furlough program, may be required to  
12    participate in an involuntary home detention program, which shall  
13    include electronic monitoring, during their sentence in lieu of

1 confinement in the county jail or other county correctional facility  
2 or program under the auspices of the probation officer. Under this  
3 program, one day of participation shall be in lieu of one day of  
4 incarceration. Participants in the program shall receive any sentence  
5 reduction credits that they would have received had they served  
6 their sentences in a county correctional facility.

7 (b) The board of supervisors may prescribe reasonable rules  
8 and regulations under which an involuntary home detention  
9 program may operate. The inmate shall be informed in writing that  
10 he or she shall comply with the rules and regulations of the  
11 program, including, but not limited to, the following rules:

12 (1) The participant shall remain within the interior premises of  
13 his or her residence during the hours designated by the correctional  
14 administrator.

15 (2) The participant shall admit any peace officer designated by  
16 the correctional administrator into his or her residence at any time  
17 for purposes of verifying the participant's compliance with the  
18 conditions of his or her detention.

19 (3) The use of electronic monitoring may include global  
20 positioning system devices or other supervising devices for the  
21 purpose of helping to verify his or her compliance with the rules  
22 and regulations of the home detention program. The devices shall  
23 not be used to eavesdrop or record any conversation, except a  
24 conversation between the participant and the person supervising  
25 the participant which is to be used solely for the purposes of voice  
26 identification.

27 (4) The correctional administrator in charge of the county  
28 correctional facility from which the participant was released may,  
29 without further order of the court, immediately retake the person  
30 into custody to serve the balance of his or her sentence if the  
31 electronic monitoring or supervising devices are unable for any  
32 reason to properly perform their function at the designated place  
33 of home detention, if the person fails to remain within the place  
34 of home detention as stipulated in the agreement, or if the person  
35 for any other reason no longer meets the established criteria under  
36 this section.

37 (c) Whenever the peace officer supervising a participant has  
38 reasonable cause to believe that the participant is not complying  
39 with the rules or conditions of the program, or that the electronic  
40 monitoring devices are unable to function properly in the

1 designated place of confinement, the peace officer may, under  
2 general or specific authorization of the correctional administrator,  
3 and without a warrant of arrest, retake the person into custody to  
4 complete the remainder of the original sentence.

5 (d) Nothing in this section shall be construed to require the  
6 correctional administrator to allow a person to participate in this  
7 program if it appears from the record that the person has not  
8 satisfactorily complied with reasonable rules and regulations while  
9 in custody. A person shall be eligible for participation in a home  
10 detention program only if the correctional administrator concludes  
11 that the person meets the criteria for release established under this  
12 section and that the person's participation is consistent with any  
13 reasonable rules and regulations prescribed by the board of  
14 supervisors or the administrative policy of the correctional  
15 administrator.

16 (1) The rules and regulations and administrative policy of the  
17 program shall be written and reviewed on an annual basis by the  
18 county board of supervisors and the correctional administrator.  
19 The rules and regulations shall be given to or made available to  
20 any participant upon request.

21 (2) The correctional administrator, or his or her designee, shall  
22 have the sole discretionary authority to permit program  
23 participation as an alternative to physical custody. All persons  
24 referred or recommended by the court to participate in the home  
25 detention program pursuant to subdivision (e) who are denied  
26 participation or all persons removed from program participation  
27 shall be notified in writing of the specific reasons for the denial  
28 or removal. The notice of denial or removal shall include the  
29 participant's appeal rights, as established by program administrative  
30 policy.

31 (e) The court may recommend or refer a person to the  
32 correctional administrator for consideration for placement in the  
33 home detention program. The recommendation or referral of the  
34 court shall be given great weight in the determination of acceptance  
35 or denial. At the time of sentencing or at any time that the court  
36 deems it necessary, the court may restrict or deny the defendant's  
37 participation in a home detention program.

38 (f) The correctional administrator may permit home detention  
39 program participants to seek and retain employment in the  
40 community, attend psychological counseling sessions or

1 educational or vocational training classes, or seek medical and  
2 dental assistance. Willful failure of the program participant to  
3 return to the place of home detention not later than the expiration  
4 of any period of time during which he or she is authorized to be  
5 away from the place of home detention pursuant to this section  
6 and unauthorized departures from the place of home detention are  
7 punishable as provided in Section 4532.

8 (g) As used in this section, “correctional administrator” means  
9 the sheriff, probation officer, or director of the county department  
10 of corrections.

11 (h) (1) Notwithstanding any other law, the correctional  
12 administrator shall provide the information specified in paragraph  
13 (2) regarding persons on involuntary home detention to the  
14 Corrections Standards Authority, and upon request, shall provide  
15 that information to the law enforcement agency of a city or  
16 unincorporated area where an office is located to which persons  
17 on involuntary home detention report.

18 (2) The information required by paragraph (1) shall consist of  
19 the following:

20 (A) The participant’s name, address, and date of birth.

21 (B) The offense committed by the participant.

22 (C) The period of time the participant will be placed on home  
23 detention.

24 (D) Whether the participant successfully completed the  
25 prescribed period of home detention or was returned to a county  
26 correctional facility, and if the person was returned to a county  
27 correctional facility, the reason for that return.

28 (E) The gender and ethnicity of the participant.

29 (3) Any information received by a police department pursuant  
30 to this subdivision shall be used only for the purpose of monitoring  
31 the impact of home detention programs on the community.

32 (i) It is the intent of the Legislature that home detention  
33 programs established under this section maintain the highest public  
34 confidence, credibility, and public safety. In the furtherance of  
35 these standards, the following shall apply:

36 (1) The correctional administrator, with the approval of the  
37 board of supervisors, may administer a home detention program  
38 pursuant to written contracts with appropriate public or private  
39 agencies or entities to provide specified program services. No  
40 public or private agency or entity may operate a home detention

1 program in any county without a written contract with that county's  
2 correctional administrator. However, this does not apply to the use  
3 of electronic monitoring by the Department of Corrections and  
4 Rehabilitation as established in Section 3004. No public or private  
5 agency or entity entering into a contract may itself employ any  
6 person who is in the home detention program.

7 (2) Program acceptance shall not circumvent the normal booking  
8 process for sentenced offenders. All home detention program  
9 participants shall be supervised.

10 (3) (A) All privately operated home detention programs shall  
11 be under the jurisdiction of, and subject to the terms and conditions  
12 of the contract entered into with, the correctional administrator.

13 (B) Each contract shall include, but not be limited to, all of the  
14 following:

15 (i) A provision whereby the private agency or entity agrees to  
16 operate in compliance with any available standards promulgated  
17 by state correctional agencies and bodies, including the Corrections  
18 Standards Authority, and all statutory provisions and mandates,  
19 state and county, as appropriate and applicable to the operation of  
20 home detention programs and the supervision of sentenced  
21 offenders in a home detention program.

22 (ii) A provision that clearly defines areas of respective  
23 responsibility and liability of the county and the private agency or  
24 entity.

25 (iii) A provision that requires the private agency or entity to  
26 demonstrate evidence of financial responsibility, submitted and  
27 approved by the board of supervisors, in amounts and under  
28 conditions sufficient to fully indemnify the county for reasonably  
29 foreseeable public liability, including legal defense costs, that may  
30 arise from, or be proximately caused by, acts or omissions of the  
31 contractor. The contract shall provide for annual review by the  
32 correctional administrator to ensure compliance with requirements  
33 set by the board of supervisors and for adjustment of the financial  
34 responsibility requirements if warranted by caseload changes or  
35 other factors.

36 (iv) A provision that requires the private agency or entity to  
37 provide evidence of financial responsibility, such as certificates  
38 of insurance or copies of insurance policies, prior to commencing  
39 any operations pursuant to the contract or at any time requested  
40 by the board of supervisors or correctional administrator.

1 (v) A provision that permits the correctional administrator to  
2 immediately terminate the contract with a private agency or entity  
3 at any time that the contractor fails to demonstrate evidence of  
4 financial responsibility.

5 (C) All privately operated home detention programs shall  
6 comply with all appropriate, applicable ordinances and regulations  
7 specified in subdivision (a) of Section 1208.

8 (D) The board of supervisors, the correctional administrator,  
9 and the designee of the correctional administrator shall comply  
10 with Section 1090 of the Government Code in the consideration,  
11 making, and execution of contracts pursuant to this section.

12 (E) The failure of the private agency or entity to comply with  
13 statutory provisions and requirements or with the standards  
14 established by the contract and with the correctional administrator  
15 may be sufficient cause to terminate the contract.

16 (F) Upon the discovery that a private agency or entity with  
17 whom there is a contract is not in compliance pursuant to this  
18 paragraph, the correctional administrator shall give 60 days' notice  
19 to the director of the private agency or entity that the contract may  
20 be canceled if the specified deficiencies are not corrected.

21 (G) Shorter notice may be given or the contract may be canceled  
22 without notice whenever a serious threat to public safety is present  
23 because the private agency or entity has failed to comply with this  
24 section.

25 (j) Inmates participating in this program shall not be charged  
26 fees or costs for the program.

27 (k) For purposes of this section, "evidence of financial  
28 responsibility" may include, but is not limited to, certified copies  
29 of any of the following:

30 (1) A current liability insurance policy.

31 (2) A current errors and omissions insurance policy.

32 (3) A surety bond.

33 ~~SEC. 2. Section 4532 of the Penal Code is amended to read:~~

34 ~~4532. (a) (1) Every prisoner arrested and booked for, charged~~  
35 ~~with, or convicted of a misdemeanor, and every person committed~~  
36 ~~under the terms of Section 5654, 5656, or 5677 of the Welfare and~~  
37 ~~Institutions Code as an inebriate, who is confined in any county~~  
38 ~~or city jail, prison, industrial farm, or industrial road camp, is~~  
39 ~~engaged on any county road or other county work, is in the lawful~~  
40 ~~eustody of any officer or person, is employed or continuing in his~~

1 or her regular educational program or authorized to secure  
2 employment or education away from the place of confinement,  
3 pursuant to the Cobey Work Furlough Law (Section 1208), is  
4 authorized for temporary release for family emergencies or for  
5 purposes preparatory to his or her return to the community pursuant  
6 to Section 4018.6, or is a participant in a home detention program  
7 pursuant to Section 1203.016 or Section 1203.017, and who  
8 thereafter escapes or attempts to escape from the county or city  
9 jail, prison, industrial farm, or industrial road camp or from the  
10 custody of the officer or person in charge of him or her while  
11 engaged in or going to or returning from the county work or from  
12 the custody of any officer or person in whose lawful custody he  
13 or she is, or from the place of confinement in a home detention  
14 program pursuant to Section 1203.016 or Section 1203.017, is  
15 guilty of a felony and, if the escape or attempt to escape was not  
16 by force or violence, is punishable by imprisonment in the state  
17 prison for a determinate term of one year and one day, or in a  
18 county jail not exceeding one year.

19 (2) If the escape or attempt to escape described in paragraph  
20 (1) is committed by force or violence, the person is guilty of a  
21 felony, punishable by imprisonment in the state prison for two,  
22 four, or six years to be served consecutively, or in a county jail  
23 not exceeding one year. When the second term of imprisonment  
24 is to be served in a county jail, it shall commence from the time  
25 the prisoner otherwise would have been discharged from jail.

26 (3) A conviction of a violation of this subdivision, or a violation  
27 of subdivision (b) involving a participant of a home detention  
28 program pursuant to Section 1203.016 or Section 1203.017, that  
29 is not committed by force or violence, shall not be charged as a  
30 prior felony conviction in any subsequent prosecution for a public  
31 offense.

32 (b) (1) Every prisoner arrested and booked for, charged with,  
33 or convicted of a felony, and every person committed by order of  
34 the juvenile court, who is confined in any county or city jail, prison,  
35 industrial farm, or industrial road camp, is engaged on any county  
36 road or other county work, is in the lawful custody of any officer  
37 or person, or is confined pursuant to Section 4011.9, is a participant  
38 in a home detention program pursuant to Section 1203.016 or  
39 Section 1203.017, who escapes or attempts to escape from a county  
40 or city jail, prison, industrial farm, or industrial road camp or from



the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, or from confinement pursuant to Section 4011.9, or from the place of confinement in a home detention program pursuant to Section 1203.016 or Section 1203.017, is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for 16 months, two years, or three years, to be served consecutively, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and the term shall not be subject to reduction pursuant to subdivision (a) of Section 1170.1, or in a county jail for a consecutive term not to exceed one year, that term to commence from the time the prisoner otherwise would have been discharged from jail.

(c) (1) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a felony offense under this section in that he or she escaped or attempted to escape from a secure main jail facility, from a court building, or while being transported between the court building and the jail facility or is a participant in a home detention program pursuant to Section 1203.016 or Section 1203.017.

(2) In any case in which a person is convicted of a violation of this section designated as a misdemeanor, he or she shall be confined in a county jail for not less than 90 days nor more than one year except in unusual cases where the interests of justice would best be served by the granting of probation.

(3) For the purposes of this subdivision, "main jail facility" means the facility used for the detention of persons pending arraignment, after arraignment, during trial, and upon sentence or commitment. The facility shall not include an industrial farm, industrial road camp, work furlough facility, or any other nonsecure facility used primarily for sentenced prisoners. As used in this subdivision, "secure" means that the facility contains an outer

1 perimeter characterized by the use of physically restricting  
2 construction, hardware, and procedures designed to eliminate  
3 ingress and egress from the facility except through a closely  
4 supervised gate or doorway.

5 (4) If the court grants probation under this subdivision, it shall  
6 specify the reason or reasons for that order on the court record.

7 (5) Any sentence imposed under this subdivision shall be served  
8 consecutive to any other sentence in effect or pending.

9 (d) The willful failure of a prisoner, whether convicted of a  
10 felony or a misdemeanor, to return to his or her place of  
11 confinement no later than the expiration of the period that he or  
12 she was authorized to be away from that place of confinement, is  
13 an escape from that place of confinement. This subdivision applies  
14 to a prisoner who is employed or continuing in his or her regular  
15 educational program, authorized to secure employment or education  
16 pursuant to the Cobey Work Furlough Law (Section 1208),  
17 authorized for temporary release for family emergencies or for  
18 purposes preparatory to his or her return to the community pursuant  
19 to Section 4018.6, or permitted to participate in a home detention  
20 program pursuant to Section 1203.016 or Section 1203.017. A  
21 prisoner convicted of a misdemeanor who willfully fails to return  
22 to his or her place of confinement under this subdivision shall be  
23 punished as provided in paragraph (1) of subdivision (a). A prisoner  
24 convicted of a felony who willfully fails to return to his or her  
25 place of confinement shall be punished as provided in paragraph  
26 (1) of subdivision (b).

27 SEC. 3. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.